

REMARKS

Claims 1 and 2 are currently pending in the application.

This amendment is in response to the Office Action of December 19, 2003.

Information Disclosure Statement(s)

Applicant notes the filing of an Information Disclosure Statement herein on July 14, 2003 and notes that a copy of the first page of the PTO-1449 was not returned with the outstanding Office Action. Applicant respectfully requests that the information cited on the PTO-1449 (which is the same as that of record to that date in the parent application hereto) be made of record herein.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 and 2 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 and 2, respectively, of prior U.S. Patent 6,392,303 (hereinafter referred to as the '303 patent). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 1 and 2 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 and 2, respectively, of prior U.S. Patent 6,594,173 (hereinafter referred to as the '173 patent). Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicant submits that a reliable test for double patenting under 35 U.S.C. § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicant asserts that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the presently claimed invention of presently amended independent claim 1 of the present application and either the embodiment of the invention set forth in corresponding claim 1 of the '303 patent or corresponding claim 1 of the '173 patent because different embodiments of the invention are being claimed therein. For instance, presently amended

independent claim 1 of the present application contains an element of the invention calling for “. . . electrically balancing the first digitline and the second digitline of each digitline pair of the at least four pairs of digitlines to balance the electrical noise therebetween by vertically twisting the first digitline and the second digitline of each pair of digitlines of the at least four pairs of digitlines between arrays of the at least four arrays of memory cells in a twist region” whereas neither independent claim 1 of the ‘303 patent nor independent claim 1 of the ‘173 does not. Accordingly, no statutory double patenting exists under 35 U.S.C. § 101 between the embodiment of the presently claimed invention of presently amended independent claim 1 of the present application and either independent claim 1 of the ‘303 patent and independent claim 1 of the ‘173 patent. Accordingly, presently amended independent claim 1 of the present application is allowable as well as dependent claim 2 therefrom.

Applicant submits that claims 1 and 2 are clearly allowable for the reasons set forth herein.

Applicant requests the allowance of claims 1 and 2 and the case passed for issue.

Respectfully submitted,



James R. Duzan
Registration No. 28,393
Attorney for Applicant(s)
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: March 16, 2004
JRD/sls:djp
Document in ProLaw